

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RICO PERRY,

Plaintiff,

v.

BRIAN HIGGINS, et al.,

Defendant.

Civil Action No. 1:23-CV-10228-WGY

DEFENDANTS' MOTION TO DISMISS

Defendants, Brian Higgins and Keith Medeiros, federal agents from the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”), by and through their attorney, Leah B. Foley, United States Attorney for the District of Massachusetts, move to dismiss Plaintiff’s Amended Complaint, Doc No. 13-1.

Defendants construe Plaintiff as asserting a *Bivens* claim against them for alleged interference with his medical care post-arrest. *See Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). But Plaintiff’s *Bivens* claim fails because it arises in a new context that is “meaningfully different” from the facts in the three Supreme Court cases recognizing a *Bivens* remedy, and because “‘special factors’ counsel[] against extending *Bivens*” to this case. *See Quinones-Pimentel v. Cannon*, 85 F.4th 63, 69–70 (1st Cir. 2023). In any event, Plaintiff fails to state a constitutional claim for deliberate indifference and any such claim would be subject to dismissal because it would be barred by qualified immunity.

As explained in the accompanying memorandum in support of this Motion to Dismiss, the Court should dismiss the Plaintiff's amended complaint against the Defendants.

Respectfully submitted,

LEAH B. FOLEY
United States Attorney

Dated: February 3, 2025

By: /s/ Mark Sauter
Mark Sauter
Assistant United States Attorney
United States Attorney's Office
1 Courthouse Way, Suite 9200
Boston, MA 02210
Tel.: 617-748-3347
Email: mark.sauter@usdoj.gov

LOCAL RULE 7.1 CERTIFICATION

I, Mark Sauter, hereby certify that pursuant to L.R. 7.1(a)(2), I have conferred with Plaintiff's counsel in advance of filing this motion in a good faith attempt to narrow or resolve the issues raised by this motion.

Dated: February 3, 2025

By: /s/ Mark Sauter
Mark Sauter

CERTIFICATE OF SERVICE

I, Mark Sauter, Assistant United States Attorney, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

Dated: February 3, 2025

By: /s/ Mark Sauter
Mark Sauter
Assistant United States Attorney